

Filed for intro on 02/02/95
House Bill _____
By _____

Senate Bill No.SB0405
By Cohen

AN ACT to amend Tennessee Code Annotated, Title 37, Chapter 1, Part 4, to require an organization to conduct a criminal background check on all persons in the organization who work with or have significant contact with children.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. The title of this act is, and may be cited as, the "Criminal Background Check Act of 1994".

SECTION 2. The purpose of this act is to ensure that an organization does not allow a person who lacks good moral character to work with or have significant contact with children in that person's capacity as a paid employee or as a volunteer for such organization. An organization shall determine whether a person lacks good moral character by conducting a criminal background check on the person according to the provisions of this act. An organization may fulfill the requirements of this act through an alternative procedure if the organization cannot conduct a criminal background check due to economic hardship.

SECTION 3. As used in this act, unless the context otherwise requires:

(1) "Applicant" means a person who applies for a position with an organization as either a paid employee or a volunteer;

(2) "Child" or "children" means a natural person under the age of eighteen (18) years;

(3) "Economic hardship" means an organization's inability to comply due to its lack of money to conduct a criminal background check as required under this act. An organization may demonstrate hardship when it can show that the anticipated cost of conducting the required criminal background check on an individual applicant exceeds three-tenths of one percent (0.3%) of the organization's average annual operating budget, calculated from the total operating budgets for the previous five (5) years. If an organization has been in operation for less than five (5) years, then the calculation under this subsection will be based on the average of the total operating budget for the number of years that the organization has been in operation.

(4) "Employee" means any person who, on a regular basis, works in, or at, or renders any service directly related to the operation and in furtherance of the organization and who receives payment from the organization for such service;

(5) "Good moral character" means a person with high legal, moral, and ethical values. The following, separately or in combination, shall create a legal presumption that a person lacks good moral character:

(A) conviction by any local, state, federal or military court of any crime involving:

(i) sexual crimes, including but not limited to rape, sexual assault, sexual battery, exhibitionism, voyeurism, or an attempt to commit any of these sexual crimes, listed or unlisted;

(ii) homicide or attempted homicide;

(iii) felonious assault or attempted felonious assault;

(iv) unlawful breaking or entering, robbery, burglary, larceny, theft, or arson;

(v) illegal use, possession, sale, manufacture, distribution
or transportation of a controlled substance, drug, or narcotic; or
(B) inclusion on the registry for sexual offenders required by Tennessee
Code Annotated, Section 38-6-110.

(6) "Organization" means an association, corporation, partnership, institution, or group of persons which shares a common interest and conducts regular activities in accordance with that common interest. This act covers all organizations, non-profit and for-profit, including but not limited to organizations formed for religious, charitable, scientific, educational, or athletic purposes;

(7) "Qualified" employee or volunteer means an employee or volunteer who meets the requirements under Section 4 of this act;

(8) "Sex offender registry" means the list of those persons who have committed certain sexual crimes, as determined by the state agencies listed under Tennessee Code Annotated, Section 38-6-110.

(9) "Significant" contact with children means a level of contact which allows a person to have relatively easy access to children or access which is unsupervised by another employee or volunteer who is qualified to work with children under the provisions of this act; and

(10) "Volunteer" means a person who provides services or assistance without expectation of remuneration and who does not receive payment for such services or assistance rendered.

SECTION 4.

(1) No organization may employ any person, whether as an employee or as a volunteer, who lacks good moral character in any capacity which requires work with or significant contact with children.

(2) Lack of "good moral character" shall be determined according to the standards specified under Section 3(5) of this act.

(3) In order for an organization to determine "good moral character," an applicant must comply with the following:

(A) Upon request by the organization, agree to the release of all investigative records to the organization for examination for the purpose of verifying the accuracy of criminal background information contained on an application to work for the organization; and

(B) Upon request by the organization, supply a fingerprint sample and submit to a criminal background records check to be conducted by the Tennessee Bureau of Investigation.

(4) Any reasonable costs incurred by the Tennessee Bureau of Investigation in conducting an investigation under subsection (3)(B) of this section shall be paid by the organization requesting the investigation and information.

(5) If any organization is unable to comply with this section due to economic hardship, as defined under Section 3(3), then such organization may fulfill the requirements of this section by:

(A) requesting the applicant to provide three (3) letters of reference from members of the community, other than from the applicant's immediate family, concerning the fitness of the applicant to work with children; and

(B) contacting the registry for sex offenders established by Tennessee Code Annotated, Section 38-6-110, to ensure that the applicant's name does not appear on the sex offender registry.

SECTION 5.

(a) A violation of this act is a Class B misdemeanor and an organization or person responsible for conducting the criminal background check for the organization shall be subject to a civil penalty of not less than fifty dollars (\$50.00) nor more than five hundred dollars (\$500.00).

(b) For every flagrant violation of this act, an organization or person responsible for conducting the criminal background check shall be subject to an additional one thousand dollar (\$1,000) fine.

SECTION 6. This act shall not require an organization to conduct a criminal background check on a person, working as a volunteer or as an employee and having significant contact with children, if such person has worked or volunteered with the organization at least one (1) year before to the effective date of this act. An organization must conduct a criminal background check according to the provisions of this act on all other employees and volunteers including those persons who have worked or volunteered with the organization less than one (1) year.

SECTION 7. The provisions of this act are declared to be remedial in nature and all provisions shall be liberally construed to effectuate its purposes.

SECTION 8. If any provision of this act or the application of this act to any organization is held invalid, such invalidity shall not affect the validity of any other provision of this act.

SECTION 9. This act shall not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before the effective date of this act.

SECTION 10. Tennessee Code Annotated, Section 37-1-414, is amended by deleting the section in its entirety.

SECTION 11. This act shall take effect on July 1, 1995, the public welfare requiring it.

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